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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-141
Regulation title	Family Access to Medical Insurance Security Plan (FAMIS)
Action title	FAMIS Select premium assistance program for FAMIS
Document preparation date	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Preamble

The APA (Section 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an "emergency situation" as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, because it is responding to mandates in the Virginia Appropriations Act [the 2005 Acts of Assembly, Chapter 951 Item 324 L and Chapter 584 (32.1-351(D), 31.2-351(2) and (3))] that must be effective within 280 days from the date of its enactment and these regulatory changes are not otherwise exempt under the provisions of the

Code § 2.2-4006. To enable the Director, in lieu of the Board of Medical Assistance Services (BMAS), to comply with changes in the Virginia Appropriation Act, he must adopt these regulatory changes as an emergency action. Since the Department of Medical Assistance Services (DMAS) intends to continue regulating the issue contained in this emergency regulation past the effective period permitted by this emergency action, it is also requesting approval of its Notice of Intended Regulatory Action in conformance with § 2.2-4007.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Family Access to Medical Insurance Security Plan: FAMIS Select (12 VAC 30-141-10 to 12 VAC 30-141-175) and also authorize the initiation of the permanent regulations promulgation process provided for in § 2.2-4007.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to implement a new health insurance premium assistance component for the Family Access to Medical Insurance Security (FAMIS) program to replace the current program, known as Employee Sponsored Health Insurance (ESHI). The goal of this new program is to both improve and simplify the operation and administration of the health insurance premium assistance component of FAMIS while maintaining the cost-effectiveness of the FAMIS program.

Legal basis

- 1) *Please confirm that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*
- 2) *Please indicate that the regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.*

The *Code of Virginia* (1950) as amended, § 32.1-351, grants to the BMAS the authority to administer and amend the Title XXI Plan (FAMIS). The *Code of Virginia* (1950) as amended, § 32.1-351(K), authorizes the Director of DMAS to “adopt, promulgate and enforce such regulations pursuant to the Administrative Process Act (§ 2.2-400 et. seq.) as may be necessary for the implementation and administration of the Family Access to Medical Insurance Security Plan.” Section 2102(a)(7) of the federal Social Security Act requires states “to assure the quality and appropriateness of care” in Title XXI SCHIP programs. The 2005 Appropriations Act, Chapter 951 Item 324 L and Chapter 584 [32.1-351(D), 31.2-351(2) and (3)] mandated that DMAS promulgate emergency regulations to simplify administration of the premium assistance program available under FAMIS and to eliminate the provision that coverage for all benefits not included in the employer's plan be provided for through supplemental insurance coverage. Additionally, these emergency regulations are not otherwise exempt under the COV § 2.2-4006.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-141-10		Definition of: Adverse Action; Employer-Sponsored Health Insurance (ESHI); Family; Fixed premium assistance amount; Premium assistance; Private or employer sponsored health insurance coverage; and Supplemental coverage.	Definitions of "Adverse action" and "Family" are amended to change the name of the premium assistance program from ESHI to FAMIS Select. Strike the definition of "Employer-Sponsored Health Insurance." Insert definitions of "FAMIS Select," "Fixed premium assistance amount", and "Private or employer sponsored health insurance coverage." Amend the definition of "Supplemental coverage" to eliminate all FAMIS benefits except coverage of childhood immunizations.
12VAC30-141-40		Review of adverse action, includes ESHI reference	Changes reference from "ESHI" to "FAMIS Select."
12VAC30-141-100		Eligibility requirements, includes ESHI reference	Changes reference from "ESHI" to "FAMIS Select." Adds "insurance company" to the requirement that adverse actions related to health benefits provided through the FAMIS Select program will be resolved between the family and the employer's health plan or the insurance company. This clarifies the regulation where the child is covered by a private policy instead of through an employer-sponsored health plan.
12VAC30-141-160 C 1		Co-payments for families not participating in employer-sponsored health insurance	Eliminates the requirement that co-payments not be required for families participating in ESHI.
12VAC30-141-170		Employer-sponsored health insurance (ESHI)	Eliminates this section and replace with 12VAC30-141-175
	12VAC30-141-175		Creates new section defining the FAMIS Select program. Changes from the ESHI program include: <ul style="list-style-type: none"> • The ability to provide premium assistance for private insurance plans not provided through an employer; • Allow for payment of all of a family's premium if certain conditions are met; • Eliminate requirements that the employer's plan provide comprehensive coverage, that

	12VAC30-141-175		<p>the employer contribute to the cost of the coverage, and the family receive the full employer contribution;</p> <ul style="list-style-type: none"> • Clarify that the policyholder, not the applicant, assign rights to DMAS for third party payment for childhood immunizations only and the private or employer plan is the only payer for all other services; • Add an eligibility requirement that the policyholder not be under a court order to provide medical support for the applicant child; • Eliminate the requirement that the family enroll in the most cost-effective plan; • Require DMAS to provide additional information to families including a guide for making an informed choice between FAMIS and FAMIS Select; • Redefine cost-effectiveness as determined by use of a fixed premium assistance amount instead of by calculation of individual premium assistance amounts per child; • Require DMAS to determine a cost-effective fixed premium assistance amount annually that is less than or equal to the average cost per member/per month of FAMIS plus administrative costs; • Require that a family’s total premium assistance amount cannot exceed the total cost of the family’s monthly premium payment for the private or employer-sponsored health plan; • Provide for the immediate transfer of a child from FAMIS Select into FAMIS contingent on the termination of coverage under the private or employer plan and repayment of any required premium assistance amount; • Reduce supplemental coverage provided to children enrolled in FAMIS Select from all FAMIS benefits to only coverage for childhood immunizations; and • Eliminate provision that DMAS pay for all co-payments charged by the employer’s plan for the FAMIS eligible child and instead require that families pay all costs associated with coverage under the private or employer’s plan.
12VAC30-141-200		Benefit packages	Delete requirement that the Medicaid look-alike plan is used as a benchmark plan for ESHI

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

Simplification of the premium assistance program available under FAMIS and elimination of the provision that all benefits not included in the employer's plan be provided through supplemental coverage, as contained herein, was mandated by the General Assembly through the 2005 Appropriations Act, Chapter 951 Item 324 L and Chapter 584 (32.1-351(D), 31.2-351(2) and (3)], thereby eliminating consideration of alternatives. The regulatory changes proposed herein conform the agency's current policies to changes required by the *Act*.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

This regulatory action does not have any impact on the institution of the family and family stability including strengthening or eroding the authority and rights of parents in the education, nurturing, and supervision of their children; encouraging or discouraging economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents, strengthening or eroding the marital commitment; nor increasing or decreasing disposable family income.